

Introduction

While the home building industry is committed to better water quality, we have serious concerns that EPA's demands and policy decisions will lead to a cleaner Chesapeake Bay. First off, is the fact that EPA has used the December 31, 2010 deadline for a TMDL to be finalized. In effect, EPA has taken an enormous project and said we work backward from this premise. We have never seen a project of this magnitude run that way.

EPA to this day, has continually "moved the target" as states have been trying to respond by developing their watershed implementation plans. Even now, some decisions are based on different model runs and model runs to come. Put yourselves in our shoes, in that we are constantly adjusting to new data and shifts in policy decisions. This is not conducive to having the enormous amount of stakeholders understand what their role is and the role of others.

Credit Trading Program

If EPA fundamentally changes Pennsylvania's nutrient credit trading program, you will have set this process back several years and will not see the type of pollution reductions that are expected. EPA will also alienate large numbers of stakeholders that have been learning how to operate under Pennsylvania's credit trading program as it stand now.

Why hasn't EPA led the charge for an inter-state nutrient credit trading program? These types of programs will be absolutely essential for new growth to continue inside the watershed.

PA's Point Source Strategy

EPA has indicated that point sources may have to go to the "limit of technology" to treat their sewage. This is an incredibly dumb thing to do. Stakeholders spent hundreds of hours developing their point source strategy which again has been communicated to many plant operators. Some plants are in the midst of retrofitting their plants and those retrofits were not based on the lower limits EPA is talking about. If "limit of technology" is applied, you will see some sewage bills double, triple or go even higher. For those on fixed incomes, such as the elderly, this is a slap in the face. There are far less expensive BMPs that can be established to lower pollution levels. I also expect a variety of lawsuits will be leveled at EPA if it sticks with the lower limits.

Backstop TMDL

The "backstop" TMDL is just a bad idea. If it is instituted it will not speed up the achievement of pollution reductions but will turn the public and the stakeholders against EPA. If you truly want to work in cooperation with us, you will NOT issue a backstop TMDL. When you come right down to it, implementing a backstop TMDL will not make anyone work any harder on this problem. In fact, it will alienate many, and be perceived as "big brother" telling us what to do.

Where is the Cost/Benefit Analysis?

Just because there is no statutory responsibility to conduct a cost benefit analysis of a TMDL does not mean one should not have been done. Far smaller projects have cost/benefit analyses completed. This seems to be cast as, whatever the cost is so be it! This again is where non-point BMPs should be pursued rather than a new point source strategy. EPA seems to have elevated the Chesapeake Bay over other important issues facing Pennsylvania and the other states.

MS4 Municipalities

EPA has indicated that a certain amount of “retrofitting” to existing urban stormwater conveyance systems is necessary. The cost to Pennsylvania’s municipalities to accomplish this task would be staggering. You folks know that the entire country is in a recession; our municipalities are shedding employees, projects and cutting services. Unless the federal government funds this program few if any municipalities will do retrofitting setting up a “stare down” with EPA and very likely costly litigation.

Common Sense is missing

EPA needs to realize that a project of this magnitude will take time and has to be done as cheaply as possible. Don’t let the timelines get in the way of coming up with public policy that is acceptable to all. If you start losing the PR battle, spur litigation and alienate stakeholders you will not achieve what we understand is the basic goal of EPA, and that is to clean the bay.

The Classic Unfunded Mandate

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) directs federal agencies “unless otherwise prohibited by law [to] assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector...” Section 202 (a) of the act directs agencies to provide a qualitative and quantitative assessment of the anticipated costs and benefits of a federal mandate resulting in annual expenditures of \$100 million or more, including the costs and benefits to State, local, and tribal governments or the private sector.

Insufficient Time for Review and Comment

The TMDL is very complex and consists of over 300 pages of text and numerous appendices, some of which are hundreds of pages long. Granting a 45-day review period for such a massive document is just ridiculous. Stakeholders should be granted at least twice that amount of time.

Finalizing the TMDL Prior to the Final Modeling

EPA has indicated that the final TMDL will be in place by the end of 2010. However, the final model run may result in a change to the December pollutant loadings, thus making the final allocations numbers in the 2010 WIPs only provisional. EPA underestimates the “damage” caused by a final TMDL be trumped by yet another model run.

EPA’s Impervious Surface Calculations are Problematic

EPA’s updated watershed model has a number of suspected deficiencies. The most egregious is the estimate of the amount of impervious surfaces in each state, which seems quite large compared to previous bay model runs. The multi-billion price tag for the proposed Chesapeake Bay MS4 retrofit requirements contained in the urban stormwater backstop allocations make it absolutely essential that EPA’s impervious surface estimates be correct.